IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2742 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHEDA DIST. CENTRAL CO.OP. BANK LTD. - Petitioner(s)
Versus
THE DIST. REGISTRAR & 3 - Respondent(s)

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Appearance :
MS ARCHANA U AMIN for Petitioner(s) : 1,
MS FALGUNI PATEL for Respondent(s) : 1 - 3.
MR PRAVIN M SHAH for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR BS PATEL for Respondent(s) : 4,
MRS RANJAN B PATEL for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 31/03/2006

ORAL JUDGMENT

Rule. Ms. Falguni Patel, learned Assistant Government Pleader waives notice of Rule for respondent Nos. 1 to

3 and Mr. BS Patel appears for respondent No. 4 and waives notice of Rule and with the consent of the learned advocates appearing both the sides, the matter is finally heard.

2. The only aspect which deserves consideration of this Court is whether the Deputy Secretary of the State Government while allowing the revision ought to have remanded the matter to the District Registrar for reconsideration or the proceedings for liquidation could have been quashed for all time to come.

3. Upon hearing the learned counsel appearing for both the sides, it appears that on factual aspects, there is no dispute to the extent that the proceedings for liquidation were initiated and the order was passed for appoi---nting liquidator. The matter was carried before the Appellate Authority and the appeal was dismissed. The matter was further carried before the State Government and the State Government has allowed the revision. One of the major ground on the basis of which the State Government interfered with the order passed by both the authorities is that as per the law down by this Court in case of **Apexa Cooperative Bank Ltd. Vs. District Registrar & Ors. reported at 1993 (2) GLH 861** while examining the matter for appointing the liquidator, it is also required for the authority to examine as to whether any lesser measure for improving the position of the society would serve the purpose or the extreme measure of appointing the liquidator is required, considering the facts and circumstances. It appears that the State Government found that the matter

is not examined accordingly by the District Registrar and by the Additional Registrar, Appeals and therefore, the revision was allowed. However, even if the orders of the District Registrar and of the appellate authority are set aside, in normal circumstances, based on the reasonings recorded by the State Government, the matter ought to have been remanded to the District Registrar for reconsideration, keeping in view the observations made by this Court in the case of Apexa Cooperative Bank (Supra). Instead of remanding the matter, the orders are set aside and no direction is given for reconsideration. Therefore, it appears that to that extent, the State Government has committed error apparent on the face of record, which may warrant interference by this Court in exercise of powers under Article 227 of the Constitution. Even otherwise also, to that extent, it can be said that the discretion is not at all properly exercised and it can be said that no effective order is passed with a view to render complete justice to the parties even if the submissions in the appeal/revision of the petitioner was accepted by the State Government.

4. In view of the above, the impugned order of the State Government dated 17.01.2005, so far as it relates to quashing and setting aside the order passed by the District Registrar and of the Additional Registrar is not interfered with, but there shall be further direction that the District Registrar shall examine the matter afresh after hearing the Society concerned and at that stage, the society may also make representation pointing out the financial improvement, if any, of the

Society pending the proceedings after the order was passed and till today and the District Registrar shall examine as to whether any lesser measure as provided under the provisions of the Act for improving the position of the Society would serve the purpose or only as last measure of appointing the liquidator is required. The District Registrar shall pass the appropriate orders in accordance with law preferably within a period of four months from the receipt of the order of this Court.

5. The petition is partly allowed to the aforesaid extent. Considering the facts and circumstances, there shall be no order as to costs. Rule made absolute accordingly.

(JAYANT PATEL, J.)

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